

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

ORDER

Plaintiff,

v.

06-cr-157-bbc

JERRY LEE WARD,

Defendant.

In an order entered on February 10, 2009, I denied defendant Jerry Lee Ward's motion pursuant to 18 U.S.C. § 3582 and Amendment 709 to the Sentencing Guidelines. Now defendant has filed a notice of appeal . He has not paid the \$455 fee for filing his notice of appeal, which is required if he is to take an appeal from the denial of a § 3582 motion. Therefore, I construe defendant's notice as including a request for leave to proceed in forma pauperis on appeal pursuant to 28 U.S.C. § 1915. According to 28 U.S.C. § 1915(a), a defendant who is found eligible for court-appointed counsel in the district court proceedings may proceed on appeal in forma pauperis without further authorization "unless the district court shall certify that the appeal is not taken in good faith or shall find that the party is otherwise not entitled so to proceed." Defendant had court-appointed counsel.

Therefore, he can proceed in forma pauperis on appeal unless I find that his appeal is taken in bad faith. In this case a reasonable person could not suppose that the appeal has some merit, as is required in order for the appeal to be taken in good faith. As I explained in the February 10, 2009 order, defendant is not eligible for a sentence reduction under § 3582 because his sentence was determined by his status as a career offender and not by drug quantity. His argument to the contrary is baseless. U.S. v. Forman, 563 F.3d 585 (7th Cir. 2009). Because defendant wants to raise a legally frivolous argument on appeal, I must certify that his appeal is not taken in good faith.

Pursuant to Fed. R. App. P. 24, defendant has 30 days from the date of this order in which to ask the court of appeals to review this court's denial of leave to proceed in forma pauperis on appeal. His motion must be accompanied by an affidavit as described in the first paragraph of Fed. R. App. P. 24(a) and a copy of this order.

ORDER

IT IS ORDERED that defendant Jerry Lee Ward's request for leave to proceed in forma pauperis on appeal from this court's order of February 10, 2009 is DENIED. I certify

that defendant's appeal is not taken in good faith.

Entered this 4th day of March, 2009.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge